



Appeal Decision

Hearing held on 10 September 2019

Site visit made on 10 September 2019

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/T1600/W/18/3207814

Cotswold Hill Quarry, B4077 Ford Manor to Charnel Plantation, Ford, Temple Guiting GL54 5RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73 of the Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Alan Smith of Smiths (Quarry Products) Limited against the decision of Gloucestershire County Council.
 - The application Ref 17/0099/CWMAJW, dated 11 October 2017, was refused by notice dated 6 February 2018.
 - The application sought planning permission for revised restoration proposals without complying with conditions attached to planning permission Ref 14/0104/CWMAJW, dated 13 August 2015.
 - The conditions in dispute (the disputed Conditions) are Conditions 3 & 4 which state:
 - 3. *Movements of Heavy Goods Vehicles (HGV) to and from the site in connection with this development are to average no more than 48 per week and a maximum of 160 in any 4 week period*
 - 4. *No more than 1,500 tonnes per calendar month of inert fill material not exceeding 15,000 tonnes in any 12 month period shall be imported into the site. The total permitted quantity of inert soils, clays and inert construction waste including that previously deposited on the site shall not exceed 300,000 tonnes (200,000 cubic metres).*
 - The reasons given for the disputed conditions are:
 - 3. *To protect the occupants and users' amenity of the local countryside and traditional landscape character in accordance with saved Policy 37 of the Gloucestershire Waste Local Plan 2002-2012 and Policy WCS14 of the Gloucestershire Waste Core Strategy.*
 - 4. *To allow material sufficient for safety/slope stability of the quarry faces in accordance with saved Policy DC3 of the Gloucestershire Minerals Local Plan, NPPF paragraph 120 and Policy WSC8 of the Gloucestershire Waste Core Strategy*
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Decision

1. The appeal is allowed and planning permission is granted for revised restoration proposals at Cotswold Hill Quarry, B4077 Ford Manor to Charnel Plantation, Ford, Temple Guiting GL54 5RU in accordance with the application Ref 17/0099/CWMAJW, dated 11 October 2017 without compliance with Conditions 3 & 4 previously imposed on planning permission

14/0104/CWMAJW, dated 13 August 2015, but subject to the conditions listed in the Conditions Schedule below.

Application for costs

2. At the Hearing applications for costs were made by Gloucestershire County Council against Mr Alan Smith of Smiths (Quarry Products) Limited, and by Mr Alan Smith of Smiths (Quarry Products) Limited against Gloucestershire County Council. These applications are the subject of separate decisions.

Main Issues

3. The main issues in this case are whether lifting controls on permitted movements of HGVs to and from the site (disputed Condition 3) and the amounts of material imported to the site in connection with the waste operation (disputed Condition 4) would
 - a) fail to conserve the landscape and scenic beauty of the Cotswolds Area of Outstanding Natural Beauty (AONB) and,
 - b) through unacceptable noise, unreasonably harm the living conditions of residents.

A further issue is whether the control on the total amount of imported material, subject of disputed Condition 4, is necessary to provide adequate control.

Reasons

Background

4. Cotswold Hill Quarry has a long-standing permission for quarrying and can currently continue until 2042. For many years the quarrying permission also included requirements for restoration, and it seems it was always accepted that in order to achieve the restoration the importation of some amount of waste was required to supplement any debris left on site after the quarrying. Until 2008 the site was subject to no restrictions on lorry movements.
5. In 2008 planning permission was granted for new working and restoration schemes and, for the first time, a condition was imposed restricting lorry movements to and from the site. However, an appeal was lodged under section 79 of the Act to vary that permission by deleting that condition and in 2010 the appeal was allowed (the previous appeal).
6. Subsequently revised contours for the site restoration were proposed that, although broadly similar to what had been intended before, were deemed by the Council to be sufficiently different to merit a fresh permission in their own right. As a result, 2 new permissions were granted in 2014. One concerned the variation of conditions of the scheme subject to the previous appeal and was ostensibly focussed on the quarrying side of the operations. The other (permission 14/0104/CWMAJW) concerned just the importation of waste to achieve the revised contours. This second permission, which is the subject of this appeal, is the only decision relating to the site that currently has conditions imposed restricting lorry movements.
7. The appellant has confirmed that, since the grant of permission 14/0104/CWMAJW, there probably have been times when the disputed conditions have been breached.

The AONB

8. Access to the quarry is along a lane (the lane). Whilst the lane continues to the south, its long, narrow, winding nature coupled with the sharp turn at the site entrance mean it is most unlikely a significant number of lorries would approach from or leave in that direction. Indeed, a condition requires a sign to be present to reinforce this. However, to the north after a short distance the lane meets the B4077. This runs east/west and although only a 'B' road it is identified as a District Link in *Gloucestershire's Local Transport Plan 2015-2031*. It is therefore the main road to serve this area of the County and provide ready access to the wider road network. Cotswold Hill Quarry is not the only quarry whose lorries use this stretch of the B4077, as there are a number of others nearby. Much of the traffic to and from those will also pass along this section of road as it links to the motorway and some of the nearest large urban areas. No doubt partly with this in mind, the *Local Transport Plan* accepts that the B4077 will carry some freight traffic.
9. The appeal site, this length of the B4077 and the other quarries nearby all lie within the AONB. In this area great weight should be given to conserving and enhancing its landscape and scenic beauty, which is enjoyed alike by local residents, visitors, those who work there and those passing through. In this regard the main area of concern was about the effect of the proposal on tranquillity, arising partly from any increase in heavy traffic in the area, and partly from the noise of individual lorries as, for example, they labour up hills. I consider that the tranquillity of this quiet, rural area is an important dimension of conserving and enhancing its landscape and scenic beauty, and this was not refuted by the appellant.
10. Policy 37 in the *Gloucestershire Waste Local Plan* says waste proposals should be determined taking into account the environment and the countryside, while Policy WCS14 in the *Gloucestershire Waste Core Strategy* accepts waste development in the AONB only if its impact can be satisfactorily mitigated. Policy CE4 in the *Cotswolds Area of Outstanding Natural Beauty Management Plan 2018-2023* by the Cotswolds Conservation Board (CCB) also aims to avoid and reduce noise pollution in the AONB. This document does not form part of the development plan, and so in that regard I cannot afford it the same weight as the Core Strategy or Local Plan. However, insofar as it gives clear guidance from the CCB concerning development in the AONB it is informative in reaching my decision.
11. The appellant is seeking to operate in non-compliance with the disputed conditions. The application proposed no alternative thresholds concerning lorry movements. At the Hearing though the appellant expressed a willingness for a condition similar to disputed Condition 3 to be imposed to allow up to 150 movements a week, as that would be expected to be its upper limit. However, the Council, the CCB and local residents contended that by lifting the restrictions totally or imposing the revised movements suggested by the appellant, the lorry traffic that could travel to and from the site over certain shorter periods could cause unacceptable noise, for those short periods only, that would undermine this sense of tranquillity.
12. I understand that the CCB has expressed concern over the years about harm to tranquillity in the AONB, and to this end it has recently introduced an

assessment methodology for the impact of lorry traffic in its position statement entitled *Tranquillity* (dated June 2019). In this it says

'it can be argued that an increase traffic flows – or HGV numbers – of more than 10% is likely to be significant and have an adverse impact on the tranquillity of the Cotswolds AONB'.

Like the Management Plan this position statement does not form part of the development plan and has not been subject to extensive consultation. Consequently, in that regard I cannot afford it the weight I would attach to a development plan document, but again I acknowledge it is informative.

13. As a starting point, the amount of material, and hence the number of lorry movements, that can come to the quarry is limited as the quarry size is finite and only so much waste can be accommodated within the approved restoration scheme. Furthermore, the appellant made clear that it was addressing restoration in a sequential, phased manner, by restoring areas of the quarry that had become exhausted while other parts of the quarry were still being worked. As a result, even if development was allowed in non-compliance with both disputed conditions, the amount of waste that can be brought into the site is limited by the need to maintain a workable quarrying operation.
14. In terms of the specific impact of the additional traffic, I was told by the CCB representative that the increase in 10% referred to its position statement concerns an increase in flows on adjacent roads rather than the increase from a particular site. However, this figure is based on a 'rule of thumb' provided in the Institute of Environmental Assessment's *Guidelines for the Environmental Assessment of Road Traffic* (the IEA Guidelines). Moreover, even in the position statement it is a qualified figure, as it states *'it can be argued...[the effect] is likely to be significant'*. I am also unaware of the geographical boundaries on which I should rely to assess this impact, which the IEA Guidelines says are an *'important prerequisite'* of such an assessment. Finally, I have no specific details as to whether the proposal would result in increases of this magnitude over the timeframe that such traffic flows should be measured.
15. Putting these areas of uncertainty over the CCB's figure to one side, by deleting the disputed Condition 3 there is the potential for an increase in lorry movements. This would cause some additional noise as there would be more lorries travelling in the vicinity. However, this increase would not be constant but would be periodic to cope with specific contracts and available capacity. Furthermore, I was given no specific evidence from either side in relation to noise levels or the amount of lorry and road traffic in the vicinity against which to benchmark any change. Indeed, I am also aware that other quarries nearby have either more permissive conditions or indeed no controls at all, and so could increase lorry movements along this road without any breach of planning control. Therefore, noting the status of the B4077 in the road hierarchy, I cannot be confident that the additional traffic that would result from the proposal would cause an unacceptable harm to tranquillity over and above what is now experienced, or would exceed the CCB's 10% threshold.
16. In allowing the previous appeal the Inspector said that the noise and disturbance of the traffic connected with the normal operation of the appeal site would be indistinguishable from that generated by the normal flow of traffic on the B4077. Whilst the Council contended that there is now more traffic in the area, that statement was unsubstantiated and does not necessarily lead me

to find the proposal before me would cause harm. In any event, if there has been an increase in traffic it would mean there is less chance the proposal would exceed the CCB's 10% figure.

17. I am aware that some 12 years ago there had been issues arising from the traffic associated with the importation of 70,000 tonnes or so of waste over a relatively short period. However, if only 300,000 tonnes of waste can be imported (some of which is already on site) and if the ability to continue quarrying is to remain, I consider there is little likelihood of such a scale of waste being imported in the future.
18. A specific concern was raised about noise caused by lorries queuing on the B4077 as they waited to turn down the narrow lane to the quarry. However, given the size of the quarry I anticipate that even if such a situation occurred it would happen only rarely and it would be for a short time. Consequently, it would not have a material effect on the AONB.
19. A further concern in the Reasons for Refusal that was raised by the CCB related to the adverse visual effect that the increased traffic would have on the AONB. Again, whilst undoubtedly there would be the potential for more lorries to be seen from time to time, given the character of the B4077 and its existing usage I have no basis to consider this impact would be sufficient to harm the AONB's landscape and scenic beauty.
20. I have had regard to the emerging *Minerals Local Plan for Gloucestershire 2018-2032* and the stage this has reached, with the publication of the Main Modifications, means it should now be afforded significant weight. However, whilst I have noted the proposed wording of various policies, these do not lead me to different findings when compared to the policies in the adopted development plan.
21. As such, I conclude it has not been demonstrated that the impact of development in non-compliance with the disputed conditions would affect the tranquillity of the area in a manner that failed to conserve the landscape and scenic beauty of the AONB. As such, in this regard the proposal would not conflict with Policy 37 in the Local Plan, Core Strategy Policy WCS14, or, insofar as it is a material consideration, Policy CE4 in the Management Plan.

Living conditions

22. No residents live immediately next to the site or along the lane as it runs up to the B4077. However, there are houses along the B4077, about 1-1.25km to the west at the top of Stanway Hill and at Upper Coscombe, and to the east where the road passes through Ford village.
23. The effect of lorry movements on noise experienced within a dwelling is different to that affecting a landscape, as it is very much a consequence of the characteristics of the road as it passes the property, and the effect of traffic during anti-social hours is more acute. Again though as stated above I have no clear benchmarks of noise or vehicle movements against which to measure the effect of this proposal, especially as I am aware the road is used by lorries connected with other quarries in the locality. It is also fair to assume that, over time, any extra traffic would not all go one way or the other along the B4077, but rather would be split between the 2 directions, thereby reducing any impact. The evidence before me therefore does not demonstrate that the

proposal would cause harm to the living conditions of residents along the B4077.

24. A specific concern was with regard to noise from lorries travelling before 0700h each morning. However, as the site is allowed to operate from that time it is not unreasonable that lorries should be using the roads in the area beforehand.
25. I am aware that some of the local residents considered any increase in lorry movements to be unacceptable. However, I do not agree that unacceptable harm would automatically arise from an increase when compared to the existing situation. In any event, as stated above other quarries nearby could increase lorry movements on the B4077 without any breach of planning control. As such, this contention from local residents is not a basis on which I can dismiss the appeal.
26. Concern was also raised too about increased fumes but again I have no specific evidence to show this would be a problem.
27. Accordingly, on the evidence before me I conclude that the proposal would not adversely affect the living conditions of residents along the B4077, and so in this regard would not conflict with Local Plan Policy 37.

The need for the absolute waste limit in disputed Condition 4

28. This condition sets a maximum limit of 300,000 tonnes of waste that can be imported in order to achieve the restoration scheme approved. Although this amount of waste is an informed estimate as to how much is needed for those works, it may not be enough (due to increased extraction), or it may be too much (because more quarry debris than expected was retained). As such, I accept it may not sit comfortably with Condition 2 that requires compliance with the proposed restoration contours. However, Condition 2 does not explicitly cap the amount of waste that could be imported, and to this end I consider a condition imposing a limit, even if it has to be varied in the future, is reasonable.
29. I therefore conclude that the reference to 300,000 tonnes in disputed Condition 4 is necessary.

Other matters

30. Concern was raised about lorries passing along narrow roads, thereby compromising the safety of pedestrians, horse riders and on-coming traffic. However, once on the B4077 I have no reason to consider the lorries would deviate onto more minor roads unless they provided the final approach to a destination. In the light of this, and mindful of the status of the B4077 in the *Local Transport Plan*, I consider any effect on highway safety, either from vehicles passing along its length or from use of the junctions on the road, would not be unacceptable.
31. It was also contended that the lorries were driven too fast, too aggressively and in ways that were inappropriate for the road network. These concerns though did not necessarily relate to drivers associated with this site. It was also a matter of driver-management and practice, and so did not affect the planning merits of this case.

32. A Unilateral Undertaking was imposed on permission 14/0104/CWMAJW. However, no details of that have been presented to me and so its requirements have not been given any weight in my decision. In any event, the parties assured me the Undertaking would still be applicable even if I were to allow this appeal.
33. Some concerns were raised about the operation of the site (such as mud on the road and the use of the wheel wash) that seem to rely more on the enforcement of conditions than affect the planning merits of this case.
34. Finally, I have concerns about how the disputed Condition 3 addresses 'backloading', its basis for the maximum figures it contains and how the maximum lorry movements can be accommodated within a rolling 4-week average. Given my findings though these are not matters I need to examine further.

Conditions

35. In the light of the above, I accept that the development can be undertaken in non-compliance with disputed Condition 3. I am not satisfied that limiting movements to 150 a week, as offered by the appellant, is justified as the figure was the maximum, and it has not been shown its imposition satisfies the necessary tests for conditions given in Government guidance. Moreover, given the lifting of stated restrictions on lorry movements there is no basis to limit the monthly importation of waste found in disputed Condition 4. The absolute limit given in that condition though is still justified.
36. Turning to the other conditions on permission 14/0104/CWMAJW, as it has already commenced and as the appellant has already operated in non-compliance with the disputed conditions, there is no need to impose a commencement condition. However, the remaining 17 conditions on that permission should be re-imposed on this decision for the reasons previously stated, subject to various minor changes to account for specific details that have been approved and new legislation or guidance. Condition 8 should also be changed slightly to make clear that no servicing, maintenance and testing of plant shall be carried out at the site between 1800h on one day and 0700h on the following day.

Conclusions

37. For the reasons stated the appeal is allowed.

J P Sargent

INSPECTOR

Conditions Schedule

- 1) Condition deleted
- 2) Unless varied by another condition of this consent, the development shall be carried out in accordance with the submitted application form, Supporting Statement, Phase 1 Ecological Survey and Habitat Restoration Options Final Report, 12th February 2014, Stability Risk Assessment of the Proposed Landscape Quarry Restoration Concept, dated January 2014, Waste Recovery Plan (LB/2008C Final Feb 2014), Landscape Assessment, dated February 2014 and drawing references: SM/139/04 Rev A – Site Plan, dated 18th November 2014; SM/139/06 Rev A – Elevation of Proposed Retained Rock Face, dated 15th May 2015; 593-01 – Landscape Context Plan, dated 24.6.13; 593-02C – Landscape Visual Appraisal Plan, dated 11.2.14; 593-03B – Landscape Restoration Proposals, dated 11.2.14; C56/3A – Restoration Surface, dated January 2014; 2008/Loc/01 – Location Plan, dated 19.2.2014; 2008/W1- Working and Restoration Progression Stage 1, (dated April 2014); 2008/W2- Working and Restoration Progression Stage 2, (dated April 2014); 2008/W3 - Working and Restoration Progression Stage 3 (dated April 2014); 2008/W4 - Working and Restoration Progression Stage 4 (dated April 2014).
- 3) Condition deleted
- 4) The total permitted quantity of inert soils, clays and inert construction waste including that previously deposited on the site shall not exceed 300,000 tonnes (200,000 cubic metres).
- 5) From the date of this permission the operator shall maintain records of all HGV movements to and from the site, associated with the conveyance of restoration material and shall make them available to the Minerals and Waste Planning Authority within 7 days of any written request. All records shall be kept for at least 48 months.
- 6) The Materials Acceptance Protocol dated 19th January 2016, approved on 31st October 2016 for the reception of imported infill shall be implemented as approved for the duration of the development.
- 7) Notwithstanding the provisions of Part 2, class A and B and Part 7, class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, replacing or re-enacting that order), no gate, wall or means of enclosure, means of access on any part of the quarry and extension, alteration of a building or installation of replacement plant or machinery without planning approval from the Mineral and Waste Planning Authority.
- 8) Except in emergencies where operations are required to protect life, limb or property, or unless otherwise agreed in writing with the Mineral and Waste Planning Authority, operations (including the manoeuvring, loading or unloading of vehicles) shall only take place between the hours of:
0700h - 1800h Monday to Friday
0700h - 1400h Saturday.

No servicing, maintenance and testing of plant shall be carried out at the site between 1800h on one day and 0700h on the following day. There shall be no working on Sundays, Local, Bank or National Holidays.

- 9) The wheel wash approved on 31st October 2016 shall be implemented and maintained for the duration of the development.
- 10) The access road surfaced in a permanent bound material from the metalled public highway up to the wheel cleaning area and surface water drainage approved on 31st October 2016 shall be maintained for the duration of works on site.
- 11) A sign shall be maintained at the quarry exit requesting that all quarry traffic turn right onto route C105 and proceed north east to the B4077 for the duration of the development of the site.
- 12) No commercial vehicles shall enter the public highway unless their wheels and chassis have been cleaned to prevent material being deposited on the highway.
- 13) No mud or debris from this development shall be deposited on the public highway.
- 14) The authorised operations shall be so conducted that noise emitted from the site shall not exceed 65dB(A) expressed as 1 hour Leq between the hours of 0700h and 1800h on Monday to Friday and 0700h to 1400h on Saturdays as measured at any boundary of the site with the microphone at a height of 1.2 metres above ground level.
- 15) No materials shall be burnt at site at any time.
- 16) The operator shall provide, implement and maintain effective measures to minimise the emission and propagation of dust from the infilling operations beyond the site boundaries.
- 17) No topsoil or subsoil shall be handled except when the soils and the ground are in a dry and friable condition.
- 18) A Biodiversity and Geodiversity Mitigation Scheme for the Retained Cliff and Viewing Platform approved on 30th March 2017 which includes details of appropriate measures for mitigation, maintenance, monitoring and contingency for the protection peregrine falcons and maintenance of exposure of important geological strata shall be implemented as approved by the Mineral and Waste Planning Authority. Any modifications to the approved details for example as a result of requirements of a protected species and/or safety shall be submitted to and agreed in writing by the Mineral and Waste Planning Authority.
- 19) No later than 10 years from the commencement of the development, a detailed Restoration and Aftercare Management Scheme based on the Biodiversity and Geodiversity Mitigation Scheme for the Retained Cliff and Viewing Platform submitted under separate condition, Restoration Drawings C56/3A dated January 2014 and 593-03B dated August 2013, the Ecology

Final Report dated February 2014 shall be submitted to and approved by the Mineral and Waste Planning Authority. The scheme shall include:

- a) A summary of all restoration and aftercare processes in progress or to be completed across the whole quarry site;
- b) The purpose, aims and objectives for the restoration and aftercare of the quarry site;
- c) Selection of appropriate measures (including establishment, enhancement, natural regeneration and after-care) for achieving the aims and objectives of restoration and aftercare for maintaining or introducing calcareous grassland, exposed cliff faces, woodland, scrub, hedgerows and patches of bare ground;
- d) Details for ground forming, soil, substrate, mineral, rock preparation and habitat and species establishment;
- e) Extent and location of proposed restoration and aftercare works and measures shown on an appropriate scale plan;
- f) Sources of, if required, soil forming materials and planting stock;
- g) Continuing provisions for supporting protected nesting birds on the retained cliff face or faces;
- h) Continuing provisions for access to important geological strata and rocks without disturbing protected wildlife;
- i) Timing of the restoration operations in relation to the final working out of the quarry site overall;
- j) Prescriptions and programme for initial aftercare of 5 years and outline of long term management thereafter;
- k) Proposals for monitoring the success of all restoration works;
- l) The organisation, body or personnel responsible for the works;

The Restoration and Aftercare Management Scheme shall also include details of any ownership, tenancy, legal and funding mechanisms by which the long-term management will be secured. The scheme shall be implemented in accordance with the approved scheme.

- 20) All plant, machinery and structures associated with this development shall be removed from the site by no later than 22 February 2042 or upon the earlier completion of quarrying and restoration of the site.

APPEARANCES

FOR THE APPELLANT:

Mr T Beeston	Cotswold Stone & Masonry Limited
Ms L Binnie	Agent
Ms J Bridge	Cotswold Stone & Masonry Limited
Mr P Martin	Smiths (Gloucester) Limited
Mr P Smith	Smiths (Gloucester) Limited

FOR THE LOCAL PLANNING AUTHORITY (GCC):

Mr N Beighton	GCC Senior Planner Monitoring & Compliance
Mr A Birchley	GCC Enforcement Officer
Ms S Pearse	GCC Principal Planning Officer
Ms L Townsend	GCC Senior Planner

INTERESTED PERSONS:

Mrs J Ewart-Perks	Local resident
Cllr S Gower	Parish Councillor, Temple Guiting Parish Council
Mr J Mills	Planning and Landscape Officer with the Cotswolds Conservation Board
Cllr N Mour	County Councillor, Stow Division
Mr D Sandy	Local resident
Ms R Waller	Clerk to Upper Slaughter & Temple Guiting Parish Councils

DOCUMENTS

- 1 Cotswolds Conservation Board Position Statement *Tranquillity and Dark Skies* (October 2010) submitted by the appellant
- 2 Officer Report for application 18/0066/CWMAJM concerning Stanleys Quarry, Greenway Road, Blockley, Gloucestershire submitted by the appellant
- 3 Relevant Main Modifications from the emerging *Minerals Local Plan for Gloucestershire 2018-2032* submitted by the Council
- 4 *Report addressing quarry development and restoration issues* associated with planning permission 08/0061/CWMAJM submitted by the Council
- 5 Cotswolds Conservation Board Position Statement *Tranquillity* (June 2019) submitted by the CCB.
- 6 Institute of Environmental Assessment's *Guidelines for the Environmental Assessment of Road Traffic* submitted by the CCB
- 7 *Supplementary Statement on behalf of the appellant response to the Cotswold Conservation Board Tranquillity Position Statement* submitted by the appellant